



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R4-OAR-2022-0226; FRL-10161-01-R4]

Air Plan Approval; South Carolina; Revisions to Startup, Shutdown, and Malfunction Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC), on November 4, 2016. This revision was submitted by South Carolina in response to a finding of substantial inadequacy and SIP call published by EPA on June 12, 2015, of provisions in the South Carolina SIP related to excess emissions during startup, shutdown, and malfunction (SSM) events. EPA is proposing approval of the SIP revision and proposing to determine that the revision corrects the deficiencies identified in the June 12, 2015, SIP call. EPA is also proposing to approve portions of multiple SIP revisions previously submitted by SC DHEC on October 1, 2007, July 18, 2011, August 8, 2014, and August 12, 2015, as they relate to the provisions identified in the June 12, 2015, SIP call.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R4-OAR-2022-0226 at www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [regulations.gov](https://www.regulations.gov). EPA may publish any comment received to its public docket. Do not electronically submit any information you

consider to be Confidential Business Information (CBI) or other information, the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www.epa.gov/dockets.

FOR FURTHER INFORMATION CONTACT: Estelle Bae, Air Permits Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Bae can be reached by telephone at (404) 562-9143 or via electronic mail at bae.estelle@epa.gov.

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I. Background

On February 22, 2013, EPA issued a *Federal Register* notice of proposed rulemaking (NPRM) outlining EPA’s policy at the time with respect to SIP provisions related to periods of SSM. EPA analyzed specific SSM SIP provisions and explained how each one either did or did

not comply with the Clean Air Act (CAA) with regard to excess emission events.¹ For each SIP provision that EPA determined to be inconsistent with the CAA, EPA proposed to find that the existing SIP provision was substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call under CAA section 110(k)(5). On September 17, 2014, EPA issued a document supplementing and revising what the Agency had previously proposed in the 2013 NPRM in light of a United States Court of Appeals for the District of Columbia Circuit decision in which the Court found that the CAA precludes authority of EPA to create affirmative defense provisions applicable to private civil suits. EPA outlined its updated policy that affirmative defense SIP provisions are not consistent with CAA requirements. EPA proposed in the supplemental proposal document to apply its revised interpretation of the CAA to specific affirmative defense SIP provisions and proposed SIP calls for those provisions where appropriate. *See* 79 FR 55920 (September 17, 2014).

On June 12, 2015, pursuant to CAA section 110(k)(5), EPA finalized “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,” hereinafter referred to as the “2015 SSM SIP Action.” *See* 80 FR 33839 (June 12, 2015). The 2015 SSM SIP Action clarified, restated, and updated EPA’s interpretation that SSM exemption and affirmative defense SIP provisions are inconsistent with CAA requirements. The 2015 SSM SIP Action found that certain SIP provisions in 36 states were substantially inadequate to meet CAA requirements and issued a SIP call to those states to submit SIP revisions to address the inadequacies. EPA established an 18-month deadline by which the affected states had to submit such SIP revisions. States were required to submit corrective revisions to their SIPs in response to the SIP calls by November 22, 2016.

¹ State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 78 FR 12460 (February 22, 2013).

EPA issued a memorandum in October 2020 (2020 Memorandum), which stated that certain provisions governing SSM periods in SIPs could be viewed as consistent with CAA requirements.² Importantly, the 2020 Memorandum stated that it “did not alter in any way the determinations made in the 2015 SSM SIP Action that identified specific state SIP provisions that were substantially inadequate to meet the requirements of the Act.” Accordingly, the 2020 Memorandum had no direct impact on the SIP call issued to South Carolina in 2015. The 2020 Memorandum did, however, indicate EPA’s intent at the time to review SIP calls that were issued in the 2015 SSM SIP Action to determine whether EPA should maintain, modify, or withdraw particular SIP calls through future agency actions.

On September 30, 2021, EPA’s Deputy Administrator withdrew the 2020 Memorandum and announced EPA’s return to the policy articulated in the 2015 SSM SIP Action (2021 Memorandum).³ As articulated in the 2021 Memorandum, SIP provisions that contain exemptions or affirmative defense provisions are not consistent with CAA requirements and, therefore, generally are not approvable if contained in a SIP submission. This policy approach is intended to ensure that all communities and populations, including overburdened communities, receive the full health and environmental protections provided by the CAA.⁴ The 2021 Memorandum also retracted the prior statement from the 2020 Memorandum regarding EPA’s plans to review and potentially modify or withdraw particular SIP calls. That statement no longer reflects EPA’s intent. EPA intends to implement the principles laid out in the 2015 SSM SIP Action as the Agency takes action on SIP submissions, including South Carolina’s November 4, 2016, SIP submittal, provided in response to the 2015 SIP call.⁵

² October 9, 2020, memorandum “Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State Implementation Plans,” from Andrew R. Wheeler, Administrator.

³ September 30, 2021, memorandum “Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy,” from Janet McCabe, Deputy Administrator.

⁴ See 80 FR at 33985.

⁵ EPA is also proposing to act on the portions of the October 1, 2007, July 18, 2011, August 8, 2014, and August 12, 2015, SIP revisions as they relate to the SSM provisions identified in the June 12, 2015, SIP call.

With regard to the South Carolina SIP, in the 2015 SSM SIP Action, EPA determined that two of the South Carolina SIP provisions identified in the petition for rulemaking filed by the Sierra Club with the EPA Administrator on June 30, 2011 (the Petition), S.C. Code Ann. Regs. (Regulation) 61-62.5 Standard No. 1, Section I.C, “Visible Emissions,” and Regulation 61-62.5, Standard No. 4, Section XI.D.4, “Total Reduced Sulfur (TRS) Emissions of Kraft Pulp Mills,” were substantially inadequate to meet CAA requirements. *See* 80 FR at 33964. In addition, in the 2015 SSM SIP Action, EPA identified one provision that provided an affirmative defense for excess emissions that occur during emergencies under Regulation 61–62.1, Section II.G.6, “Emergency Provisions” (now Section II.L, as explained below in Section II of this NPRM). This provision was not identified in the Petition but was included by EPA in the 2015 SSM SIP Action because EPA determined that it was substantially inadequate to meet CAA requirements. *See id.* The rationale underlying EPA’s determination that these provisions are substantially inadequate to meet CAA requirements, and therefore to issue a SIP call to South Carolina to remedy the provisions, is detailed in the 2015 SSM SIP Action and the accompanying proposals. South Carolina submitted a SIP revision to EPA on November 4, 2016,⁶ in response to the SIP call issued in the 2015 SSM SIP Action. EPA is proposing to approve South Carolina’s November 4, 2016, SIP revision as it relates to SSM events, which would remedy the SIP-called provisions. In addition, EPA is proposing to approve portions of

⁶ On November 4, 2016, South Carolina also submitted to EPA other requested SIP revisions: changes to Regulations 61-62.1, Section III, “Emissions Inventory and Emissions Statements,” 61-62.60, “South Carolina Designated Facility Plan and New Source Performance Standards,” and 61-62.5, Standard No. 2, “Ambient Air Quality Standards.” The SIP revision related to 61-62.1, Section III, “Emissions Inventory and Emissions Statements” was approved on May 31, 2017, *see* 82 FR 24851, and the SIP revision related to 61-62.5, Standard No. 2, “Ambient Air Quality Standards,” was approved on June 29, 2017, *see* 82 FR 29414. EPA is not acting on the change made to Regulation 61-62.60, “South Carolina Designated Facility Plan and New Source Performance Standards,” because this is not part of the federally approved SIP. This proposed action, if finalized, will fully close out the November 4, 2016, submittal.

South Carolina's SIP revisions submitted on October 1, 2007,⁷ July 18, 2011,⁸ August 8, 2014,⁹ and August 12, 2015,¹⁰ that re-organize and re-number sections to clarify and streamline permitting requirements, update internal references, correct typographical errors, and incorporate minor updates to the language for clarification and consistency in South Carolina's SIP.

Although these submittals include changes to several South Carolina air quality regulations, in today's proposed action, EPA is only proposing to act on the portions of each submission related to the 2015 SSM SIP Action, which include revisions to Regulation 61-62.1, Section II.L; Regulation 61-62.5, Standard No. 1, Section I.C; and Regulation 61-62.5, Standard No. 4, Section XI.D.4. EPA has acted or will act on all other changes included in the October 1, 2007, July 18, 2011, August 8, 2014, and August 12, 2015, submissions in separate actions.¹¹

II. Analysis of SIP Submissions

⁷ On October 1, 2007, South Carolina also submitted to EPA other SIP revisions to Regulations 61-62.1, Section II, "Permit Requirements;" 61-62.5, Standard No. 5.2, "Control of Oxides of Nitrogen (NO_x);" and 61-62.5, Standard No. 4, "Emissions From Process Industries." The SIP revision related to 61-62.5 was approved on June 25, 2018. *See* 83 FR 29455. EPA will address the remaining changes to the SIP in separate actions.

⁸ On July 18, 2011, South Carolina also submitted to EPA SIP revisions to Regulations 61-62.1, Section I, "Definitions and General Requirements;" 61-62.3, "Air Pollution Episodes;" 61-62.5, Standard No. 2, "Ambient Air Quality Standards;" 61-62.5, Standard No. 4, "Emissions from Process Industries;" 61-62.5, Standard No. 6, "Alternative Emission Limitation Options ("Bubble");" 61-62.5, Standard No. 7, "Prevention of Significant Deterioration;" and 61-62.5, Standard No. 7.1, "Nonattainment New Source Review (NSR)." This submittal also updated the entirety of Regulation 61-62 to correct typographical errors, provide clarification, and delete or update obsolete requirements. The SIP revision for 61-62.1, Section I was approved June 25, 2018, *see* 83 FR 29451; 61-62.3 was approved August 21, 2017, *see* 82 FR 39551; 61-62.5, Standard No. 2 was approved April 3, 2013, *see* 78 FR 19994; 61-62.5, Standard No. 4 was approved on June 25, 2018, *see* 83 FR 29455; 61-62.5, Standard No. 7 was approved on August 10, 2017, *see* 82 FR 37299; and 61-62.5, Standard No. 7.1 was approved on August 10, 2017, *see* 82 FR 37299. EPA will address the remaining SIP revisions in separate actions.

⁹ On August 8, 2014, South Carolina also submitted to EPA SIP revisions to Regulations 61-62.1, Section I, "Definitions and General Requirements;" 61-62.1, Section II, "Permit Requirements;" 61-62.1, Section III, "Emissions Inventory and Emissions Statements;" 61-62.1, Section IV, "Source Tests;" 61-62.1, Section V, "Credible Evidence;" 61-62.5, Standard No. 1, "Emissions From Fuel Burning Operations;" and 61-62.5, Standard No. 4, "Emissions From Process Industries." The SIP revision for 61-62.1, Section I was approved June 25, 2018, *see* 83 FR 29451; 61-62.1, Section III was approved May 31, 2017, *see* 82 FR 24851, and June 12, 2015, *see* 80 FR 33413; 61-62.1, Section IV was approved August 21, 2017, *see* 82 FR 39537; 61-62.1, Section V was approved August 21, 2017, *see* 82 FR 39537; 61-62.5, Standard No. 1 was approved June 25, 2018, *see* 82 FR 29455; and 61-62.5, Standard No. 4 was approved June 25, 2018, *see* 83 FR 29455. EPA will address the remaining changes to the SIP in separate actions.

¹⁰ On August 12, 2015, South Carolina also submitted to EPA, SIP revisions to Regulations 61-62.5, Standard No. 1, "Emissions From Fuel Burning Operations;" 61-62.5, Standard No. 2, "Ambient Air Quality Standards;" 61-62.5, Standard No. 7, "Prevention of Significant Deterioration;" and 61-62.5, Standard No. 7.1, "Nonattainment New Source Review." The SIP revision for 61-62.5, Standard No. 2 was approved June 29, 2017, *see* 82 FR 29414; 61-62.5, Standard No. 7 was approved August 10, 2017, *see* 82 FR 37299; 61-62.5, Standard No. 7.1 was approved August 10, 2017, *see* 82 FR 37299. This proposed action, if finalized, will fully close out the August 12, 2015, submittal.

¹¹ *See supra* notes 7-10.

A. Regulation 61-62.1, Section II.L, “Emergency Provisions”

In the 2015 SSM SIP Action, and as fully explained in the September 2014 supplemental notice of proposed rulemaking, EPA identified as inadequate and issued a SIP call for South Carolina’s Regulation 61-62.1, Section II.G.6, titled “Emergency Provisions,” which provides an affirmative defense for excess emissions during emergencies. To address this SIP-called provision, South Carolina’s November 4, 2016, SIP revision seeks to remove the affirmative defense for excess emissions that occur during emergencies, provide minor changes to the wording, and renumber and otherwise revise the provisions to reflect the removal of the affirmative defense provision (including replacing a reference to “demonstration” of the affirmative defense of an emergency with a reference to “documentation” of an emergency). EPA is proposing to approve this removal and to approve portions of the October 1, 2007, and August 8, 2014, SIP revisions as they relate to Section II.G.6, including the renumbering of Section II.G.6 to II.L.

The October 1, 2007, SIP revision seeks to renumber Regulation 61-62.1, Section II.G.6, as approved in the existing South Carolina SIP, as Regulation II.L and to remove the entry at Section II.G.6. The effect of relocating the provision to Section II.L is that the “Emergency Provisions” section is now a stand-alone section applicable to all air quality permits issued by the State, whereas Section II.G.6 previously applied to conditional major operating permits only. EPA is also proposing to approve minor changes from the August 8, 2014, revision which renumber the subparagraphs in the 2007 version of Section II.L as II.L.2 and II.L.3 and make minor changes related to internal citations.¹² The combined effect of these two SIP revisions, as it relates to the inadequate provisions identified in the 2015 SSM SIP Action, is to renumber

¹² In this proposed action, EPA is proposing to revise the SIP to make the format of internal citations in the SIP-called provisions consistent with that of South Carolina’s current regulations. However, the internally referenced provisions themselves have not yet been renumbered in the SIP. EPA will act on the remainder of South Carolina’s renumbering edits in Regulation 61-62.1 in a later SIP action (or later actions), and until that time, will include a reference in the regulatory text table noting the correct cross-references if the Agency finalizes this proposed action.

II.G.6.b (the affirmative defense provision) as II.L.2 and renumber II.G.6.c. (the affirmative defense documentation provision) as II.L.3.

The November 4, 2016, SIP revision removes paragraph II.L.2 (the affirmative defense provision), rennumbers the documentation provision from paragraph II.L.3 to paragraph II.L.2, and removes the affirmative defense language from the documentation provision. Thus, the “Emergency Provisions” section of Regulation 61-62.1, as revised, no longer provides an affirmative defense for emergencies.

Approval of these intervening changes previously submitted to EPA would not affect EPA’s basis for the SIP call on this provision as provided in the 2015 SSM SIP Action. EPA is approving only the intervening changes from the current SIP-approved version of Regulation 61-62.1, Section II, as transmitted in the October 1, 2007, and August 8, 2014, SIP revisions in conjunction with the changes transmitted in the November 4, 2016, submittal, to remove the affirmative defense provisions. EPA proposes to find that the October 1, 2007, August 8, 2014, and November 4, 2016, SIP revisions, as they relate to Regulation 61-62.1, Section II.G.6 (now Regulation 61-62.1, Section II.L) are consistent with CAA requirements and adequately address the specific deficiencies in this provision that EPA identified in the 2015 SSM SIP Action with respect to the South Carolina SIP.

B. Regulation 61–62.5, Standard No. 1, Section I.C, “Visible Emissions”

In the 2015 SSM SIP Action, EPA issued a SIP call for Regulation 61–62.5, Standard No. 1 titled “Emissions from Fuel Burning Operations,” Section I titled “Visible Emissions,” Subsection C titled “Special Provisions,” because it provided an exemption from opacity limits for excess emissions from fuel-burning operations that occur during startup or shutdown and was inadequate to meet the fundamental requirements of the CAA. To address this deficiency, South Carolina’s November 4, 2016, SIP submission, in relevant part, seeks to remove the portion of Regulation 61–62.5, Standard No. 1, Section I.C, that provides the exemption. The portion being removed states, “The opacity standards set forth above do not apply during startup or shutdown.”

In addition to correcting the specific deficiency in that provision that EPA identified in the 2015 SSM SIP Action, EPA proposes to approve other minor revisions, as they relate to Section I.C, from the July 18, 2011, and August 12, 2015, submissions.

The July 18, 2011, submittal seeks to amend the language in Regulation 61–62.5, Standard No. 1, Section I.C to exclude natural gas-fired units from a requirement to maintain startup, shutdown, and maintenance records.¹³ On August 12, 2015, South Carolina submitted an additional revision to this provision which seeks to modify the language to include propane-fired units in the exemption as well.¹⁴ On August 16, 2017, EPA published a direct final rule to approve the July 18, 2011, and August 12, 2015, revisions to Section I.C. *See* 82 FR 38829. However, since Section I.C was SIP-called in the 2015 SSM SIP Action, EPA withdrew the direct final rule and thus did not approve this portion of the July 18, 2011, and August 12, 2015, submittals. EPA is now proposing to act on these changes to the SIP-called provision in conjunction with the State’s November 4, 2016, SIP revision, which addresses the deficiencies identified in the 2015 SSM SIP Action.

Section 110(l) of the CAA provides that EPA shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA section 171), or any other applicable requirement of the CAA. South Carolina considered CAA section 110(l) in requesting the changes described in the preceding paragraph. The net changes to Section I.C requested by South Carolina mean that the applicable opacity standards will apply at all times to the SIP units specified at Sections I.A and I.B of Regulation 61-62.5, Standard No. 1, and only those units burning natural gas or propane exclusively will be excluded from the requirement to maintain logs of startup and shutdown periods. In a letter dated December 30, 2016,¹⁵ South Carolina explains that the State expects no

¹³ EPA is proposing to act on the portions of the July 18, 2011, SIP revision related to what is in the existing SIP under Regulation 61-62.5, Standard No. 1, Section I.C, “Visible Emissions,” only.

¹⁴ EPA is proposing to act on the portions of the August 12, 2015, SIP revision related to what is in the existing SIP under Regulation 61-62.5, Standard No. 1, Section I.C, “Visible Emissions,” only.

¹⁵ This letter is included in the docket for this proposed rulemaking.

increase in actual emissions as a result of exempting units burning only natural gas and propane fuels from maintaining logs of startup and shutdown periods because there are minimal opacity concerns with these fuels during startup, shutdown, or other operational modes. Because natural gas and propane contain relatively minor amounts of sulfur and the combustion of these fuels results in relatively minor emissions of particulate matter, sulfur dioxide, and sulfuric acid, all of which could result in visible emissions, opacity is expected to be minimal when these fuels are burned exclusively. *See* 58 FR 3590, 3645, 3656 (January 11, 1993). Furthermore, these requested changes to Section I.C will not result in any increase in emissions because they do not change any applicable emission limitations and will not affect the State's ability to attain or maintain state or federal standards or reasonable further progress. Thus, EPA proposes to find that the July 18, 2011, August 12, 2015, and November 4, 2016, SIP revisions pertaining to Regulation 61-62.5, Standard No. 1, Section I.C, are consistent with CAA requirements and adequately address the specific deficiencies in this provision that EPA identified in the 2015 SSM SIP Action with respect to the South Carolina SIP.

C. Regulation 61–62.5, Standard No. 4, Section XI.D.4, “Total Reduced Sulfur (TRS) Emissions of Kraft Pulp Mills”

In the 2015 SSM SIP Action, EPA determined that Regulation 61-62.5, Standard No. 4 titled “Emissions from Process Industries,” Section XI titled “Total Reduced Sulfur (TRS) Emissions of Kraft Pulp Mills,” Subsection D titled “Monitoring, Recordkeeping, and Reporting,” Paragraph 4, was substantially inadequate to meet the fundamental requirements of the CAA, as it provided an exemption from sulfur limits for kraft pulp mills for excess emissions that occur during SSM. In the November 4, 2016, submission, South Carolina requests removal of Regulation 61-62.5, Standard No. 4, Section XI.D.4, thereby eliminating the exemption from sulfur limits for kraft pulp mills for excess emissions that occur during SSM events. EPA proposes to find that South Carolina's SIP revision removing Section XI.D.4 is consistent with

CAA requirements and adequately addresses the specific deficiency in this provision that EPA identified in the 2015 SSM SIP Action with respect to the South Carolina SIP.

III. Proposed Actions

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). As described in Section II of this NPRM, EPA is proposing to approve South Carolina's November 4, 2016, SIP submission with respect to Regulation 61–62.1, Section II.L; Regulation 61–62.5, Standard No. 1, Section I.C; and Regulation 61–62.5, Standard No. 4, Section XI.D.4. EPA is also proposing to approve portions of the October 1, 2007, July 18, 2011, August 8, 2014, and August 12, 2015, South Carolina SIP submissions that seek revisions to these provisions, as specified in Section II of this NPRM. EPA is further proposing to find that these SIP revisions correct the deficiencies identified in the 2015 SSM SIP Action and fully satisfy South Carolina's obligations with respect to the SIP call included in the 2015 SSM SIP Action. Accordingly, the approval would remove the inconsistency between the EPA's SIP-approved rules and South Carolina's rules (i.e., a "SIP gap") for Regulation 61–62.1, Section II.L; Regulation 61–62.5, Standard No. 1, Section I.C; and Regulation 61–62.5, Standard No. 4, Section XI.D.4. EPA is not reopening the 2015 SSM SIP Action and is taking comment only on whether this SIP revision is consistent with CAA requirements and whether it addresses the substantial inadequacies in the specific South Carolina SIP provisions identified in the 2015 SSM SIP Action.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, and as discussed in Sections I through III of this preamble, EPA is proposing to incorporate by reference into the South Carolina SIP Regulation 61–62.1, Section II.L, "Emergency Provisions," State effective

on September 23, 2016;¹⁶ Regulation 61–62.5, Standard No. 1, Section I, “Visible Emissions,” State effective on September 23, 2016; and Regulation 61–62.5, Standard No. 4, Section XI, “Total Reduced Sulfur (TRS) Emissions of Kraft Pulp Mills,” State effective on September 23, 2016. EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided they meet the criteria of the CAA. Accordingly, these proposed actions merely approve removal of State law not meeting Federal requirements and do not impose additional requirements beyond those already imposed by State law. For that reason, these proposed actions:

- Are not “significant regulatory actions” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

¹⁶ The remaining portions of Regulation 61–62.1, Section II, would retain the June 24, 2005, State effective date, as currently approved in the South Carolina SIP under 40 CFR 52.2120(c). Additionally, although Section II.G of Regulation 61–62.1 would retain the June 24, 2005, State effective date, paragraph G.6 specifically is being proposed for removal from the South Carolina SIP because it is being recodified as Section II.L of Regulation 61–62.1. These changes are explained in more detail in Section II.A of this NPRM.

- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Do not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

Because these proposed actions merely propose to approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law, these proposed actions for the State of South Carolina do not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Therefore, these proposed actions will not impose substantial direct costs on Tribal governments or preempt Tribal law. The Catawba Indian Nation (CIN) Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120 (Settlement Act), “all state and local environmental laws and regulations apply to the Catawba Indian Nation and Reservation and are fully enforceable by all relevant state and local agencies and authorities.” The CIN also retains authority to impose regulations applying

higher environmental standards to the Reservation than those imposed by state law or local governing bodies, in accordance with the Settlement Act.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 18, 2022.

Daniel Blackman,
Regional Administrator,
Region 4.

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